Editor's note: 83 I.D. 23

JEANNE PIERRESTEGUY

IBLA 76-38 Decided January 23, 1976

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting appellant's color of title application (N 6444).

Affirmed as modified.

1. Color or Claim of Title: Generally--Withdrawals and Reservations: Effect of--Withdrawals and Reservations: Stock-driveway Withdrawals

A color of title application for land which has been withdrawn for a stock-driveway prior to any conveyance in a color of title applicant's chain of title is properly rejected as to such land.

2. Administrative Procedure: Burden of Proof--Color or Claim of Title: Applications

An applicant under the Color of Title Act, 43 U.S.C. § 1068 (1970), has the burden to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met.

3. Color or Claim of Title: Description of Land--Color or Claim of Title: Good Faith--Conveyances: Generally

A color of title application is properly rejected where the applicant has failed to establish how conveyances in her chain of title describing lands different from that described in her application, and different from each other, give color of title to the applied for land for the requisite period of time.

4. Color or Claim of Title: Description of Land--Color or Claim of Title: Good Faith--Conveyances: Generally

Generally, conveyances which describe only a "possessory interest" in a parcel of land do not constitute a claim or color of title within the contemplation of the Color of Title Act.

APPEARANCES: A. D. Demetras, Esq., Reno, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This is an appeal from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 16, 1975, rejecting appellant's class 1 color of title purchase application for the NE 1/4 NE 1/4 SE 1/4 NE 1/4, SE 1/4 NE 1/4 NE 1/4, E 1/2 NE 1/4 NE 1/4 NE 1/4 of sec. 11, and the N 1/2 SW 1/4 NW 1/4, S 1/2 NW 1/4 NW 1/4 NW 1/4, NW 1/4 SE 1/4 NW 1/4, W 1/2 NE 1/4 SE 1/4 NW 1/4, S 1/2 NW 1/4 NW 1/4, NW 1/4 NW 1/4 NW 1/4 NW 1/4 of sec. 12, in T. 22 N., R. 54 E., M.D.M., Eureka County, Nevada. The application, filed on May 1, 1972, was accompanied by a list of conveyances pertinent to appellant's claim of title. They all described a possessory interest in certain lands. Photocopies of the instruments (or abstracts thereof) from the County Recorder's office appear in the record.

Review of the master title plat indicates that fee simple title to the land described in the application is owned by the United States and that all of section 11 is withdrawn for a livestock driveway effective March 21, 1919. The record contains a fairly extensive land report prepared by the BLM with respect to the subject land. The report disclosed the absence of private land in Homestead Canyon where the applied-for land is located. Lands in the vicinity have been used primarily for

livestock grazing and mineral exploration. The report states that "[n]o valuable improvements are located on the subject land and none of the land shows evidence of agricultural development."

It is noted in the report that the subject lands were apparently developed as a homesite some time in the early 1900's, that a rock cabin at the site was probably developed at that time, and that a small area of the site was fenced at the time of the original development. The report goes on to state that, "because the subject land has been unfenced and relatively unimproved it has been managed as National Resource Land." Finally, the report reveals that "[t]he subject lands are located within the Blackpoint Grazing Allotment and are grazed by livestock owned by Bill Harris."

The decision of the BLM rejected the application because: (1) the land in section 11 was withdrawn prior to initiation of the claim; (2) there was an absence of valuable, existing improvements on the land; (3) there were breaks in chain of title to the land based on the variance in descriptions between the first instruments of title, the later instruments, and the description in the application; and (4) deeds purporting to convey a "possessory interest" are not effective as color of title.

Appellant argues on appeal that the old cabin and fence on the land are in fact valuable improvements and that a "possessory interest" is sufficient to establish color of title.

The Color of Title Act, 43 U.S.C. § 1068 (1970), provides, in part, as follows:

> The Secretary of the Interior * * * shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land * * * issue a patent for not to exceed one hundred and sixty acres of such land * * *.

[1] A purchase application under the Color of Title Act may not be based upon a claim initiated on withdrawn or reserved lands. Ben J. Boschetto, 21 IBLA 193 (1975); Alva M. Knorr, 14 IBLA 237, 241 (1974); 43 CFR 2540.0-5(b). The first deed in appellant's chain of title is dated after the land in section 11 was already withdrawn for a stock-driveway pursuant to the Act of December 29, 1916, as amended, 43 U.S.C. § 300 (1970). Therefore, the application must be rejected as to the land in section 11 because of the withdrawal, apart from other reasons.

[2] An applicant under the Color of Title Act has the burden to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. Homer W. Mannix, 63 I.D. 249, 251 (1956). This burden has not been met in this case.

[3] A review of the chain of title reveals the basic inadequacy in appellant's showing of a holding of the land for the requisite time under a claim or color of title. The first deed shown on the form accompanying appellant's application is dated February 21, 1933, and describes a,

> Possessory interest in and to a tract of land situated in Diamond Valley, Eureka County, Nevada, and about three miles south of the "Maggini Ranch" in said County, consisting of 80 acres, unsurveyed land.

The second deed, dated February 7, 1934, described,

> * * * a possessory interest in and to a tract of land situated in Diamond Valley, Eureka County, Nevada, and about three miles in a southerly direction from the Maggini ranch in said county, consisting of about 80 acres, unsurveyed land, and what will probably be when surveyed, or located therein, the W 1/2 NW 1/4 of Section one, and NE 1/4 NE 1/4 of Section two, all in township twenty two, north, range 54 east, M.D.B.M.

The third deed in 1945 is significant as the grantee was appellant's husband, Bertrand Arambel. This deed conveyed certain land described by legal subdivision in White Pine County. It also listed certain water rights and interests and then other "pieces and parcels of land, and water rights located in EUREKA COUNTY, STATE OF NEVADA," and recited the same description quoted above contained in the 1934 instrument. The fourth instrument in the chain is dated December 19,

1957, whereby Bertrand Arambel and Mary Jean Arambel, his wife, conveyed to themselves as "joint tenants with right of survivorship" of the real property owned by them in certain counties in Nevada. The parcels of property are not set forth. The next instrument gives an entirely different description from the descriptions in the previous instruments. It is a court decree, dated August 10, 1964, distributing the assets of the estate of Bertrand Arambel to appellant whose name is given as Jeanne Arambel, a/k/a Marie Jeanne Arambel, Jeanne Marie Arambel, Mary Jean Arambel. The instrument includes the following description of land in T. 22 N., R. 54 E., M.D.B. & M.:

> Section 12: Possessory interest in land approximately in the NE 1/4 of SE 1/4; NW 1/4 of SW 1/4.

The last instrument is a deed, dated January 16, 1967, from appellant to herself and her husband, Auguste Pierresteguy, as joint tenants with survivorship, containing the same description as the court decree.

In examining these descriptions, it is apparent that the 1934 deed and 1945 deeds purport to describe unsurveyed land. The description of the land as it will probably be when surveyed constitutes a contiguous parcel. However, the 1964 court decree and deed of 1967 describe land approximately in two separate quarter-quarter parcels which are one-half mile apart. The description in the application again describes a completely contiguous parcel, albeit a somewhat

irregularly sided tract. The field report discloses that T. 22 N., R. 54 E., M.D.B.M., was surveyed in 1937. Only the application gives a description according to the survey. The deeds and court decree in 1964 describe the land as unsurveyed but give a description of what the land will probably be when surveyed. None of those probable descriptions embrace any of the land as described in the application. Furthermore, there is no explanation of the change in the description in the 1964 decree which gives two separate tracts of land widely separate from each other, rather than a contiguous parcel as described in the prior conveyances. 1/ Neither of the tracts in the 1964 decree embrace land described in the application, although the land is in the same section.

Although appellant claims she can supply deficiencies in the chain of title, she has offered no explanation as to how any of the conveyances in her chain of title can give color of title to the subject land when it is not included within the description of the land. The most the record shows in this connection is a letter to her from Wallace T. Boundy, dated December 23, 1970, giving a description of his survey of land embracing the cabin and old fences. He stated:

1/ Appellant apparently was the beneficiary and executrix of the estate. We note that one executing an estate for his own behalf cannot by describing lands in the administration of an estate create one's own title, or color of title, to land where none existed before. Bryan N. Johnson, 15 IBLA 19 (1974).

> The following is a legal description of the 80 acre Homestead situated in Homestead Canyon on the East side of Diamond Valley. This legal description should tend to replace the one now on file in the Eureka County Court House.
>
> This legal description has been compiled from field notes of a survey made under my supervision on November 24th, 1970. The area we have surveyed and described herein takes in 80 acres of the most logical bottom ground surrounding the old fences and Stone Cabin still in existence.

This explanation given by appellant's surveyor indicates that the description in the application was achieved from his survey to include "the most logical bottom ground surrounding the old fences and Stone Cabin." There is no explanation or attempt to correlate the new description with the old descriptions or to show that the parties to the conveyances of record understood the descriptions to cover such "bottom ground." The instruments in the chain of title do not refer to the cabin, the fences, or anything which would illustrate that such land was intended. On the face of the record as it now stands there is nothing which satisfactorily ties the land applied for with the conveyances. Appellant indicated she first knew she did not have clear title to the land in 1970. The provision of the Color of Title Act under which appellant applied requires a holding under claim or color of title for at least 20 years. Her chain of title describing land in section 12--which is not the land in the application--goes back only to 1964. That description is entirely different from the prior descriptions.

Generally there can be no color of title to land which is not embraced in a description in some instrument of conveyance. Cloyd and Velma Mitchell, 22 IBLA 299 (1975); William P. Surman, 18 IBLA 141 (1974); Marcus Rudnick, 8 IBLA 65 (1972). Further, a mistaken belief that land may be included within a description is not a sufficient basis for concluding land has been held in good faith under a claim or color of title. Id. On the basis of the present record we must conclude there is insufficient information which would establish a good faith holding of the land described in the application under a claim or color of title sufficient to meet the requirements of the Color of Title Act.

[4] There is an additional reason for rejecting appellant's application. All of the instruments in her chain of title refer to a "possessory interest in land." It is axiomatic that adverse possession alone against the United States creates no right to land. E.g., Beaver v. United States, 350 F.2d 4 (9th Cir. 1965), cert. denied, 383 U.S. 937 (1966). The purpose of the Color of Title Act was to enable persons who believed, with good reason, that they had title to land to purchase such land upon finding the defect in their title. The appellant's mere statement, without any support in reason or the law, that a "possessory interest" can constitute a color of title cannot be accepted. The use of the term in these instruments

suggests something other than title; otherwise, its use in an instrument of conveyance would be redundant. The specific qualification that only a "possessory interest" is being conveyed appears to be a limitation on the quantum of the interest, and a recognition that something less than a fee simple title is being conveyed. Without more, we cannot accept conveyances which limit the estate being conveyed to a "possessory interest" as constituting a claim or color of title within the contemplation of the Color of Title Act. Appellant has not shown why she or her predecessors could believe in good faith that they had fee simple title to land under conveyances which purport only to convey a "possessory interest in land." Cf. Thomas Ormachea, A-30092 (May 8, 1964).

We must conclude that appellant has failed to show that the land was held in good faith under some instrument giving the requisite color of title. 2/ The decision is modified to reflect the reasons stated above as the bases for our affirmance.

2/ In view of this conclusion it is unnecessary to determine whether the dilapidated structures on the property may be considered "valuable improvements" within the meaning of the Color of Title Act. Cf. Lena A. Warner, 11 IBLA 102, 106 (1973); Virgil H. Menefee, A-30620 (November 23, 1966).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, as modified, for the reasons stated in this decision.

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Joan B. Thompson
Administrative Judge

We concur:

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Martin Ritvo
Administrative Judge

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Edward W. Stuebing
Administrative Judge